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In Supreme Court of the United States

OCTOBER TERM 1905.

No. 211.

HENRIETTA S. CHRISTOPHER, ET AL.,
Plaintiffs in Error,

vs.

JOSEPH W. NORVELL, Receiver,
Defendant in Error.

BRIEF OF H. H. BUCKMAN,
For Plaintiffs in Error.

In Error to the United States Circuit Court of Appeals
For the Fifth Circuit.

The Floridian

IN THE
SUPREME COURT OF THE UNITED STATES
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HENRIETTA S. CHRISOPHER, ET AL.,
Plaintiffs in Error.
vs.
JOSEPH W. NORVELL, Receiver,
Defendant in Error.

BRIEF OF H. H. BUCKMAN FOR PLAINTIFFS IN ERROR.

This was an action brought by the defendant in error against the plaintiffs in error, in the Circuit Court of the United States for the Fifth Circuit in the Southern District of Florida, on *the common law side of that Court.*

STATEMENT OF THE CASE.

In the year 1886 one R. M. Schumacher, the owner of seventy-five shares of the capital stock of the First National Bank of Florida (a corporation incorporated under the National Banking Act, and located and doing business in the State of Florida), died testate, and, among other bequests, bequeathed by his will to his daughter Henrietta S. Christopher (plaintiff in error here), who was at that time and still is the wife of the co-defendant (co-plaintiff in error), John G. Christopher (both of whom were at that time, and still are, residents and citizens of the State of Florida), one-fifth of his stock holdings in said Bank, which amounted to fifteen shares.

That thereafter his executors caused the stock holdings of the testator to be divided, and said Bank to issue a certificate for fifteen shares of said stock to, and in the name of, the said Henrietta S. Christopher, and caused the same to be delivered to her.

She had no knowledge of the transaction until the said stock was delivered to her.

After the receipt of the stock she received several dividends on the same, in checks made payable to her order, which she personally cashed.

Some time after the receipt of the stock, an application was made to have the charter of the Bank amended, and she personally signed the same. In this her husband did not join her, nor was the same acknowledged or otherwise authenticated by her.

In 1903 the Bank became insolvent. The defendant in error was appointed receiver, the Comptroller of the Currency caused an assessment on the stock, of one hundred cents on the dollar, to be made, notice of which and request for payment was made to and made upon Henrietta S. Christopher, and by her refused.

This suit was brought for the collection of this assessment.

The husband, John G. Christopher, is and was not connected with the transaction in any way, and is simply a nominal party to the proceedings.

The declaration having shown upon its face that Henrietta S. Christopher was a married woman, the same was demurred to on the ground that the suit being a *common law proceeding*, and the *judgment* to be rendered therein a *personal money judgment against a married woman*, that under the *constitution and laws of the State of Florida* such a suit and judgment was *prohibited*, and for such reason that the Circuit Court of the United States *had no jurisdiction* or power to render *any judgment in the case.*

Printed record, page 5.

The Court overruled the demurrer, which is the first error assigned.

Printed record, page 6.

The defendant then pleaded five pleas.

First.—That she never was indebted.

Fourth.—That she is not and never was, a shareholder in the said Bank, she being a married woman at and before the time of the matters alleged against her.

The second, third and fifth pleas set up, that she never subscribed for, or became the purchaser of, any stock in said Bank; that the stock had been bequeathed to her by her father's will; that she was at the time of the receiving of the same, the bringing of this suit, and still is, a married woman, a citizen and resident of the State of Florida, and that the constitution and laws of the State of Florida prohibit the rendition of any personal judgment against her for money, which would be the result of this action, in consequence of which this Court would have no jurisdiction to entertain or render the same.

Printed record, pages 6-7.

On demurrer to all these pleas (except the first), the Court sustained the same to the second, third and fifth pleas, and overruled the same as to the fourth plea.

Printed record, pages 9-10.

NOTE:—In the printed record, the fourth plea reads, as it was originally pleaded, as follows:

"And for a further plea, defendants say that the defendant, Henrietta S. Christopher, is not and never was a shareholder in the said First National Bank of Florida, she being a married woman at and before the time of the matters alleged in said declaration against her."

In overruling the demurrer to this plea the Court, of its own motion, struck out with a pencil, as appears by the original record in the Clerk's office, so much of said plea as reads as follows:

"She being a married woman at and before the time of the matters alleged in the said declaration against her."

Being all of the said plea after the word "Florida," and after he had so stricken this out he overruled the demurrer to the remaining portion of the plea, that "she was not a shareholder."

This explanation is made in order that the record may speak the fact, show the actual action of the Court, and the reason for one of the assignments of error.

Record page 7.

The sustaining of this demurrer is the next ground of error assigned.

The plaintiffs then joined issue on the first and fourth pleas.

Printed record, page 10.

The cause was then tried before the Court without the intervention of a jury, a jury being waived by special stipulation.

Printed record, page 10.

The cause was tried before the Court on an agreed statement of facts.

Printed record, pages 18-22.

The Court made a special finding of facts and law.

FINDING AS TO THE FACTS.

That Henrietta S. Christopher was a shareholder in said Bank for fifteen shares of stock of the par value of Fifteen Hundred ($1,500.00) Dollars; that an as-

sessment of the full par value of the stock was duly made, which amounted to Fifteen Hundred ($1,500.00) Dollars; and that the said Henrietta S. Christopher was at and before the time of the acquiring of the stock, at the time of the failure, insolvency, and putting in the hands of a receiver of the Bank, and still was, a married woman, a citizen of the State of Florida, and that said stock came to her by the will of her father.

Record page 23.

AND AS A MATTER OF LAW.

That she being a shareholder was subject to all the liabilities of shareholders in said Bank.

Record page 23.

And found for the plaintiff in the sum of Sixteen Hundred and Sixty ($1,660.00) Dollars.

Record page 23.

In the agreed statement of facts it was stipulated that either party might have a right to object to any of the evidence, and defendant Christopher did object to the consideration by the Court of so much of the stipulation introduced by the plaintiff as tended to show the alleged participation of Henrietta S. Christopher in an application for an amendment to the charter of the Bank; to the amendment of the articles of the association offered in evidence; and to paragraph 4 of the stipulation, reciting that she had signed the same.

Printed record, pages 21.

This contention the Court overruled, which was excepted to and is assigned as error.

Printed record, page 21-22.

After the evidence had been introduced, defendant Christopher demurred to the evidence, moved to strike out the same, and for judgment on the ground that this was a common law proceeding against a married woman, the result of which must be a personal money judgment, prohibited by the constitution and laws of Florida, and that this Court was without jurisdiction to entertain or render the same.

Printed record, page 22.

The Court overruled and denied the same, which was excepted to, and which is assigned as error.

Printed record, page 22.

After the rendition and filing of the special findings of law and fact by the Court, defendants made motion for a new trial and in arrest of judgment, which upon hearing was overruled, and to which defendants excepted, which is made ground of error.

Printed record, pages 23-24-25.

The Court then rendered judgment against Mrs. Christopher. Record, page 10.

Defendants then prosecuted their writ of error to this Court with bill of exceptions.

Printed record, pages 37-25-26-32-33.

And assign error as follows:

IN THE SUPREME COURT OF THE UNITED STATES.

JOSEPH W. NORVELL, Receiver, etc.,

vs.

HENRIETTA S. CHRISTOPHER &
JOHN G. CHRISTOPHER.

ASSIGNMENTS OF ERROR.

Come now Henrietta S. Christopher and John G. Christopher, defendants in the above entitled cause named and file the following assignments of error upon which they will rely upon their prosecution of the writ of error prayed for and taken herein to the Supreme Court of the United States, to-wit:—

I.

That the United States Circuit Court of Appeals in and for the 5th Circuit erred in rendering judgment of affirmance of the judgment rendered by the Circuit Court of the United States in and for the Southern District of Florida which said judgment was a personal money judgment Henrietta S. Christopher, a married woman, resident and citizen of the State of Florida, in a prcoeeding at law prohibited by the constitution and laws of the said State:

II.

That said United States Circuit Court of Appeals in and for the 5th Circuit erred in not rendering a judgment, reversing the judgment of the Circuit Court of the United States in and for the Southern District of Florida, said lower Court beng without jurisdiction to render such judgment against the defendant Henrietta S. Christopher in the State of Florida, she being then and there a married woman, and the same being in a proceeding at law governed by the laws, rules and procedure in force in said State which prohibits the same.

III.

That the defendant Henrietta S. Christopher being a married woman, a resident and citizen of the State of Florida and under the common law disabilities still existing by the constitution and laws of said State in which said alleged liability accrued, said proceedings

were instituted; and said judgment rendered, was not in contemplation of the law, or within the meaning of the Acts of Congress known as the National Banking Act, a shareholder in the First National Bank of Florida within the contemplation of the liability clause of the said Act, so as to render her personally, or her property, which by the constitution of Florida is declared her separate estate, liable to an assessment under such Act upon any shares of stock owned by her at the time of the insolvency of the said bank and appointment of its receiver, and the said Circuit Court of the United States for the Southern District of Florida, committed reversible error in rendering such judgment against her therfor, and said Circuit Court of Appeals in affirming the same;

IV.

That said suit being a proceeding at law and brought in the State of Florida, was controlled by the rules and practice in proceedings at law prescribed by the laws of that State under its constitution which absolutely prohibits and declares null and void any personal money judgment against a married woman; the constitution of which State prohibiting the taking or sequestration of her property which it declares is her separate estate by such means, and the said defendant, Henrietta S. Christopher having pleaded her status and disability as fixed by said constitution and laws, in the said suit, the rendition of the judgment against her therein which is a personal money judgment, by said Court and its affirmance by the said Court of Appeals was error in the same, being in conflict with the constitution and laws of the State of Florida and the Constitution and laws of the United States and therefore, void.

WHEREFORE, the said defendants Henrietta S Christopher and John G. Christopher as plaintiffs in

error pray that the judgment of the said Circuit Court of the United States in and for the Southern District of Florida and of the said Circuit Court of Appeals for the 5th Circuit affirming the same, be reversed and that such directions be given that full force and efficiency may enure to these defendants by reason of the defense set up by them in their pleadings in said cause and under the law governing the same.

H. H. BUCKMAN,
Attorney for defendants & Plaintiffs in Error.
Printed record pages 33-35.

BRIEF OF THE ARGUMENT.

In order to maintain this judgment it must he held either A:—that the relaton of the *stockholder* is not contractual or, B:—that the *Act of Congress* called the "National Banking Act" *is paramount* to the *constitution and laws of a State.*

If the liability is to be determined by the Act then it must turn upon the correct legal definition of the terms *"persons"* and *"shareholders"*.

This Act provides as follows:
Only *"natural persons"* can be incorporators.
Section 5139 of Revised Statutes.

Section 5139 provides as to the division of the capital and that,
Each "person" becoming a "shareholder" shall, etc. * *

Section 5151 provided that
The *"shareholders"* * * * shall be held individually responsible.

Section 5152 provides that

"Persons" holding stock as executors, etc., shall not be personally subject to liabilities as *"stockholders,"* etc.

It has been held that an Act authorizing persons to form a corporation means persons of *full age,* though no age be stated.

Cook on Corporations, 4th Ed., Vol, 1, page 1, note 1.

Re, Globe Asst., 63 Hun., 263.

Cf. Re. Saxon, 1 Ch., 210.

A pledgee of such stock is not liable to such assessment, even though he had caused the stock, for his protection ,to be transferred to him on the books of the bank.

Pauley vs. The State Loan & Trust Co., 165 U. S., 606.

THE TERMS *persons* and *shareholders* are *technical terms* and must be given their accepted legal definitions as defined at the time of the passage of the Act.

The terms used in the Act, therefore, meant and mean,*only* such persons who were sui juris and competent to contract, the Act expressly providing that persons *under disability* might be the *owners* or *holders* of stock through their trustees, guardians, etc., and *yet not liable personally.*

Section 5152 Revised Statutes, U. S.

The relaton between the *shareholders* and the *corporation* is a *contractual one,* and the liability for an assessment upon stock in the case of insolvency is clearly settled to be a liability growing out of a *contract,* and not in the nature of a *penalty.*

Cook on Corporations, 4th Ed., Sec 10, note 1, page 30; note 1, page 31.

Cook on Corporations, 4th Ed., page 420.
Cook on Corporations, Sec. 64, note 3.
Cook on Corporations, Secs. 66, 67, 318, 319, 320.
Godfrey vs. Terry, 97 U. S., 171.
Carroll vs. Green, 92 U. S., 509.
Norris vs. Wrenshall, 34 Md., 492.
Wickson vs. Nesmuth, 46 N. H., 371.
Corning vs. McCullough, 1 N. Y., 47.
Coleman vs. White, 14 Wis. 700.
Huntington vs. Atrill, 146 U. S., 657.
Purdey's Beach on. Corporations, Vol. 2 Sec. 220.

Whether a *liability* exists or not must be determined by the *status* of the persons *at the time*, and according to the *law* of the *place* when the *contract* was made and *not* by the *National Banking Act or the Act creating the corporation.*

Purdy's Beach on Corporations, Vol. 1 Sec. 353.

The competency of a married woman to take, hold and transfer shares of stock is governed by the law of her domicil.

Purdy's Beach on Corporations, Vol. 1, Sec. 390.

Contracts are to be governed by the laws of the place of contrat.

The personal competency or incompetency of persons to contract such as infants, persons under duress or under coverture are to be governed by the law of the place of domicile.

Story on the Conflict of Laws, Secs., 97 and 103. 1 Grant, 51.
Rawles' Bouvier's Law Dictionary, Vol. 2, page 199.

The law of domicile governs the status of the person. 112 U. S., 452.

The domicile of *this corporation*, and that of the *married woman*, were *the same;* to-wit, the *State of Florida.*

Printed Record pages 19 and 22.

A national bank is a citizen of a state where domiciled, and the National Bank of the State of Florida was, therefore, *a citizen of the State of Florida.*

Desty, Vol. 1, Sec., 89.

The action by the receiver in this case is not an action by or for the benefit of the Unted States, but for the benefit of the creditors of the Bank.

Mickland vs. Hall, (Iowa) N. W. Rept., 352.
Micckland vs. Hall, 71 (Iowa) N. W. Rept., 352, 353.

The creditors of the Bank and the receiver stand in the shoes of the Bank and have no greater rights than the Bank would have had in enforcing the collection of its assets. The receiver only holds the estate and title of the Bank.

Caey vs. Credit Mobilia, 2 Woods, 77.
Bushnell vs. LeLand, 164 U. S., 684.

The liability in case of insolvency under the National Banking Act is a statutory liability, and the defenses to this liability are substantially the same as in other cases of statutory liability.

Cook on Corporation, 4th Ed., page 405.

It has been determined by decisions under the National Banking Act, that the relation of the stock holder to the corporation being a contractual relation, that

among other defenses, the statute of limitations, according to the law of the different states, against the claim for such an assessment upon the stock, is a good defense.

Howell vs. Roberts, 29 Neb., 483.
Greenan vs. Palmer, 117 Ill., 619.
Richmond vs. Iron, 121 U. S., 27.
Child vs. Coffin, 17 Mass., 64.
Carroll vs. Green, 92 U. S., 509.
Godfrey vs. Terry, 97 U. S., 171.
Moores vs. Nat. Bank, 104 U. S., 625.

It has been held that where "A" gave a mortgage to a national bank and then a mortgage on the same property to "B" who took it without notice of the first mortgage, that "B" should have preference according to the law of that state.

Bank vs. Whitney, 103 U. S., 130.

The personal competency or incompetency, *i. e.* (status) of parties to a contract can always be set up as a defense to the avoidance of such alleged contract or as to any liability growing out of the same, and this includes idiots, infants, persons under duress, and persons under coverture.

Gould Pleading, pages 257-8.

The liability growing out of a contractual relation could, therefore, not be incurred by a person *incompetent* under the laws of the state where made, to enter into a contract.

No person under legal disability could therefore be included in the legal contemplation of the terms *"persons"* and *"shareholders"* used in the National Banking Act, as such persons would be incapable of entering into the contractual relation in those states or jurisdictions

where those disabilities existed; and at common law neither an infant, a married woman, or a person non compos could make a contract, and could not, therefore, be a shareholder in a corporation

Cook on Corporations, 4th Ed., Secs. 66, 250, 318, 319, 320.

Cook on Corporations, 4th Ed., Vol. 1, page 30, note 1.

9th Ry. and Corpt., L. J. 197.

Parsons on Contracts, Vol. 1, page 369.

Canal Bank vs. Partee, 99 U. S., 325.

The *common law* is still in *force* in *Florida* and a married woman cannot make a contract; and no action at law may be *brought* or *judgment rendered against her.*

THE FOLLOWING IS FROM THE STATUTE OF FLORIDA.

"The common and statute laws of England which are of a general and not of a local nature, with the exception hereinafter mentioned down to the 4th day of July, 1776, be and the same are hereby declared to be in force in this State, provided the same be not inconsistent with the constitution and laws of the United States and the acts of the legislature of this State."

Enacted November 6th, 1829.

And carried forward in the statute books of the State and into the present revised statutes as, Sec. 59, R. S. of Florida.

Hart vs. Bostwock, 14 Fla., 172.

EXTRACTS FROM THE CONSTITUTION OF THE STATE OF FLORIDA.

"All property real and personal of a wife owned by her before marriage or lawfully acquired afterward by gift, devise, bequest, descent or purchase, shall be her separate property, and the same shall not be liable for the debts of her husband without her consent given by some instrument in writing executed according to the laws respecting conveyances by married women."

Sec. 1, Art. 11, Constitution of Florida.

"A married woman's real or personal property *may* be charged in *equity*, and sold or the uses——, rents and profits thereof sequestrated for the *purchase money* thereof, or for money or thing due upon any *agreement* made by *her in writing* for the *benefit of her separate* property; or for the price of any property purchased by her; or for labor and material used with her knowledge or assent in the construction of buildings, or repairs, or improvements *upon her* property, or for agricultural or other labor bestowed thereon, with her knowledge or consent."

Sec. 2, Art. 11, Constitution of Florida.

At common law, a *married woman* could not make a contract and the *State of Florida* having enacted the *common law*, and the same remaining *unchanged* in that *respect* in said State, she is *still incapable* of enterng into a *contract* or of being held for *any personal liability growing out of the same.*

Andrews Am. Law, pages 708—9.
Parsons Conts., 2nd Ed., Vol. 1, page 369.
Parsons Conts., 2nd Ed., Vol. 2, page 688.

The Supreme Court of Florida has so decided.
Dollner vs. Snow, 16 Fla., 86.

The Supreme Court of Florida has decided that a married woman in this State cannot bind her person by contract either at law or in equity.

Dollner vs. Snow, 16 Fla., 86.

That she cannot become a partner.

De Graum vs. Jones, 23 Fla., 83.

That the promissory note of a married woman is void.

Hodges vs. Price, 18 Fla., 342.
Dolner vs. Snow, 16 Fla., 86.
Goss vs. Turner, 21 Fla., 406.
Randall vs. Bougardis, 23 Fla., 264.

All laws passed by State authority not contrary to the constitutional provisions of the United States, are supreme within the States and cannot be gainsaid by the Federal Government.

Sutherland on Statutory Construction, Sec. 21, 22.

We submit that the relation of a shareholder to the corporation is a *contractual one*, and the *liability* sought to be enforced, *a statutory* liability growing out of *contractual* relation and *not a penalty*. And as the *married woman* in this case was *incompetent* to enter into a *contract*, she could incur *no liability*; that corporations incorporated under a National Banking Act or an Act of Congress, are vested with *no greater rights or powers* in this regard than corporations created by or under *the Act of any State*, but that the *liability*, if any, must be determined in all cases by the *law of the place* and the *status of the persons as determined by such laws*; that in this case the *laws of Florida* having fixed the *status of its citizen, a married woman*, as *incompetent* to enter into a *contract, they are the sole criterion*, and have *determined* that *no such liability can exist*.

The cases referred to by counsel for the defendant in error, and which will be insisted upon as holding a contrary opinion, we desire to briefly refer to and discuss. They are as follows:

Witters vs. Sowles, 32 Fed. Rept., 767; 38 Fed. Rept. 700.
Robinson vs. Turrentine, 59 Fed. Rept., 554.
Anderson vs. Line, 14 Fed. Rept., 405.
First National Bank of St. Albans, 49 Fed. Rept., 120.
Bundy vs. Coke, 128 U. S., 185.
Keyser vs. Hitz, 133 U. S., 138.

But none of these cases upon a careful examination affirm any doctrine contrary to the contentions contained in this brief, as we will show.

In Witters vs. Sowles, which arose in the state of Vermont, the district Judge decided, that the assessment *was a penalty* and *did not arise* out of a contract.

It affirms and recognizes, however, the fact that at common law a married woman would not have been liable but she was held liable in that case because *by the laws of Vermont,* she could sue and be sued.

When the case came up in the Circuit Court, see 35 Fed. Rept., 460, that court *overruled* the lower court upon the question that the *liability was a penalty* and *decided* that it *arose out of a contractual relation,* but affirmed the judgment on the ground that under the laws of Vermont a married woman's common law disabilities had been removed.

Another branch of this same case is reported in 38 Fed. Rept., 700, in which the same doctrine was affrmed, holding that by the laws of Vermont, the common law disabilities had been removed.

In Anderson vs. Line which arose in Pennsylvania, the court said it was of the opinion that coverture did

not exempt. The case does not show it, but

Under the laws of Pennsylvania, as in Vermont, the common law disabilities of married women had been removed.

In the First National Bank of St. Albans, the court held the married woman liable, citing the cases above and also that of Bundy vs. Coke as authority, but this decision is also based upon the same proposition that in Vermont a married woman's common law disabilities had been removed.

It is true in this case that the court also referred to the case of Keyser vs. Hitz, then just decided, which case we will take up later.

In Bundy vs. Coke, the case went off upon a demurrer to the bill, the court holding the allegations of the bill sufficient.

In the case of Robinson vs. Turrentine, which arose in North Carolina, the court in a laborious opinion determined that the purchase of stock by a married woman was not a contract and that if she was the owner of the stock, she was liable, citing Keyser vs. Hitz.

NOTE:—This is the first case decided in a state where the laws of that state provided that a married woman could not make a contract and the decision is contrary to all authorities upon the proposition that the liability was not a matter of contract, and, therefore, cannot be recognized or quoted as an authority. Its very reasoning is destructive of its conclusions.

In the case of Keyser vs. Hitz, decided by the Supreme Court of the United States, Justice Harlan, held that the married woman was liable to such an assessment. It is to be borne in mind, however, that the Court was then passing upon the provisions of a national statute passed by the very same body which legislates for the District of Columbia, in which this case arose, and that

by the laws of the District of Columbia, the common law disabilities of married women had been removed and she could sue and be sued.

In this light the decision of the Court is in harmony with the established law, for the defendant in that case was not by the reason of the law of her domicile, or of the place of contract, incapacitated from entering into a contract; and the same laws allowing her to be sued for any liability arising out of such relations, the decision is in harmony with the cases where such conditions of law exist.

It is unfortunate, however, that certain portions of the opinion so read as apparently not to limit the decision to cases where such disabilities have been removed, and this has been erroneously followed by some circuit courts of the United States in the cases above referred to, and quoted as authority by Mr. Cook on Corporations, on page 486 of his work, to the effect that a married woman, irrespective of whether her common law disabilities have been removed or not, has by that decision been held liable for assessment *under the National Banking Act.*

In that opinion the Court says: "If she received transfers of the stock with her knowledge and consent signed the application for merger and received the dividends, then she was liable to be treated as a shareholder with such responsibility as the laws impose upon shareholders of national banks."

A careful reading of the whole opinion must, however, conclusively show that the Court had in mind the status of the defendant who was, by the laws of the District of Columbia, capable of entering into a contract and permitted to sue and be sued, and while the cases of Anderson vs. Line and of Witters vs. Sowles, as well as the Reciprocity Bank, reported in 22 New York, 915, are cited as authority, I am unhesitatingly of the opinion

that the Court did not intend that decision to become applicable to other than the case before it, or to those arising out of like conditions, and that it was not intended to establish a precedent by which a liability could be incurred and enforced against a person whom the law of the land declares incompetent to incur it.

In the New York case referred to it will be seen that, as in the District of Columbia, the common law disabilities had been removed and she was competent to contract and could sue and be sued.

To place any other construction upon this decision would be contrary to establish law and precedent and to the decision of the Supreme Court of the United States in the case of the Canal Bank vs. Partee, and to the opinion of the Court itself in the last clause there-

THE CIRCUIT COURT OF THE UNITED STATES HAS NO JURISDICTION OF THIS CASE.

It was apparent upon the face of the proceeding that this was a action at *law brought* against a *married woman* by the Receiver of a bank, *both* of whom were *domiciled in and citizens* of the *State of Florida* upon an alleged liability, the basis for which was a par value assessment upon the capital tock of the bank, made by the Comptroller of the Currency.
of, which winds up as follows:

"We are of the opinion that the coverture of the defendant did not prevent the plaintiff from recovering judgment for the amount of the assessment *if she was within the meaning of the statutes a shareholder in the bank, but,* as to what *property* may be *reached in* the *enforcement of the judgment,* it is *not before us and we express no opinion.*"

The husband of the married woman is and was but a nominal party defendant; the only object of the suit was to *enforce* an *alleged liability* growing *out of a contract*, the result of which could only have been a *personal money judgment* against *a married woman* which both *the law* and *procedure* of the *State of Florida prohibit;*

The United States Court was *bound* to have been *governed* by the *law and procedure in force in the State of Florida*, and that law had *determined* that the *Courts of the State* were *without jurisdicion to entertain or enforce such a proceeding* or to *render such a judgment*

This being an assessment by the comptroller of the par value of the stock, the action is properly at law.

Kennedy vs. Gibson, 8 Wallace, 198.
Godfrey vs. Terry, 97 U. S., 171.

The National Banking Act provides no remedy, no method of procedure for the enforcement or collection of these liabilities. Resort must, therefore, be had to the law of that jurisdiction in which the alleged liability is sought to be enforced, and the law of *the forum must* govern as *to the remedy*.

Section 914 of the Revised Statutes of the United States is in substance as follows:

That in all cases at law the Courts of the United States must follow the laws, proceedings, practice, forms and modes of procedure existing at the time in like cases in the courts of record of the state in which such United States Courts are held, and this extends to, and includes the evidence, sufficiency and scope of the pleadings, the form and effect of the verdict, and the lien and mode of the enforcemnet of the judgment.

Section 914 R. S. of United States.
Glenn vs. Sumner, 132 U. S., 152.

Robertson vs. Perkins, 129 U. S. 233.
Williams vs. Benedict, 8 How. U. S., 107.
Simonton on Fed. Courts, pages 152, 153, 156.

It has already been shown in this brief that by the laws in force in the State of Florida a married woman cannot enter into a contract so as to bind herself personally, and, therefore, can incur no personal liability, and as a natural sequence no suit based upon a contract, or any liability growing out of a contract, the result of which would be a personal judgment against her, can be maintained in any of the courts of that State.

Such being the case, the question was one of *jurisdiction* of the person of the defendant, Henrietta S. Christopher, which having been fully presented to the Court should have *been sustained, and the suit dismissed.*

Gould on Pleading, pages 231, et seq.
Canal Bank vs. Partee, 99 U. S., 325.

In this last case arising under the laws of the State of Mississippi, the Court declared that the coverture of the married woman *was jurisdictional,* and that the personal judgment rendered against her by the Court was absolutely void.

Domicile and citizenship of Henrietta S. Christopher, as well as the Bank, having been in the State of Florida, and the suit having been brought in that State, the Circuit Court of the United States was, therefore, bound by the laws of the State of Florida, in regard to the mode and manner of enforcing this liability, and if the laws of that State prohibited such an action against this defendant the Circuit Court of the United States was without jurisdiction in the premises and any judgment rendered by it was absolutely void.

The state courts are supreme in the construction of their own statutes and the United States Courts must follow the same.

Moores vs. The National Bank, 104 U. S. 625.
Tioga R. R. Co., vs. Blossburg, 20 Wal., 137.
Kibbie vs. Ditto, 93 U. S., 674.
Fairfield vs Gallatin, 100 U. S., 47.

The Supreme Court of the State of Florida has construed the law of that State as to the status of a married woman, and their liabilities under contract, determining the very question at issue by deciding that

No personal judgment at law or decree in equity can be rendered aginst a married woman in this State.

Prentiss vs. Paisley, 25 Florida, 927.
McQuaid vs. Fortune, 24 Florida, 509.
Dolmer vs. Snow, 16 Florida, 86.(
Adams vs. Frye, 29 Florida, 318.
Goss vs. Furman, 21 Fla., 406.
Garvin vs. Watkins, 29 Florida, 151.

As this is not a suit in equity seeking to charge Mrs. Christopher's separate estate, the amendment to the articles of the Bank, not being executed according to law by being separately acknowledged and having her husband join therein, and that part of the stipulation shown as paragraph 4, of the testimony as to her signing be rendered against a married woman in this State.
mony and should have been stricken out on the defendant's motion. It can in no wise affect this case, however.

Printed record, page 21.

The findings of the Court that the defendant, Henrietta S. Christopher, was a *married woman* entitled *her* to *judgment*, under the *laws of Florida* and *the decisions of its Supreme Court thereon.*

Printed record, page 23.

The judgment of the Court is *a personal judgment* against the defendant, *Henrietta S. Christopher for money.*

Printed record, page 13-14.

The affirmance of the judgment of the Circuit Court of the United States by Circuit Court of Appeals of the Fifth Circuit, was error; their judgments should have been one of reversal of the lower Court on the ground ground that the Courts of the States of Florida would have had no jurisdiction to render such a judgment, and the Courts of the United States sitting in that State were bound by the laws and procedure of that State in that regard, that the Circuit Court of the United States which tried this case would also have been without jurisdiction, and that such a judgment was void as prohibited by the constitution and laws of the State of Florida;

We respectfully submit that it clearly appears upon the face of the whole proceeding that this judgment was a nullity, that the Court had no jurisdiction to render it, and that the Circuit Court of the United States committed error in rendering the same, and the Circuit Court of Appeals in affirming the same, and that the said judgments and proceeding should be reversed and the cause remanded with instructions that judgment be rendered for the plaintiff in error, defendants in the Court below.

N. N. Ducktman

Attorney for Plaintiff in Error.